

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 633 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO LTD

Versus

MANGILAL RUPAJI TEWAR

Appearance:

MR PV NANAVATI for Petitioner

SERVED for Respondent No. 1

MR MTM HAKIM for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 06/10/97

ORAL JUDGEMENT

1. Admit. Mr.M.T.M.Hakim appears and waives service of admission on behalf of respondent No.2. This appeal is preferred by United India Insurance Ltd against the judgment and award dated 29.11.1996 passed by MACT (Auxi) Baroda in MACP No.1175/93. The claimant has received certain injuries because of accident that took place and he has filed the claim petition for amount of Rs.1 lac.

The tribunal has awarded amount of Rs.84,000/-. The Insurance Co is aggrieved thereby and preferred the present appeal. Mr.Nanavaty has challenged the award mainly on two grounds, i.e. that the award is excessive to the extent that the tribunal has awarded Rs.25,000/- towards pain, shock and suffering. If one turns to the injuries which the claimant has received due to the accident that took place on 12.5.93 there is no doubt about the fact that he has received injuries on waist portion as well as in the right thigh and in the wrist of the hand there are fracture injuries for which initially he has taken treatment in Sayajirao hospital and he also produced copy of the complaint at Exh.21, panchnama at Exh.22, admission of offence by the driver of the offending vehicle in the court of JMFC wherein fine of Rs.250/- was imposed vide Exh.23. Before the criminal court the claimant has even otherwise established the negligence on the part of the driver of vehicle bearing Reg.No.GJ-6-T-3760.

2. The claimant has taken treatment at Maharaja Sayajirao Hospital as well as in the private hospital and Dr.Rajiv S.Shah and he has produced certificate which shows that there were injuries, one was on right leg and that there was partial disability. Certificate to that effect is also produced. Total disability worked out by the tribunal at 50% for the entire body while 15% for a part of the body. Tribunal has awarded amount of Rs.25,000/- towards pain, shock and suffering. According to Mr.Nanavaty the said amount of award is somewhat on the higher side. One shall have to keep in mind that a person who suffered simple fracture must have undergone pain, shock and suffering, but it is not the case where some Iron rod is required to be inserted and it is a case where amount of Rs.25,000/- which is awarded can be said to be somewhat on higher side and same is required to be reduced to Rs.18,000/- from Rs.25,000/-.

3. As regards future loss of income the tribunal has awarded amount of Rs.45,000/- on the basis that the tribunal has taken that he must be earning atleast Rs.50/-per day. After deducting amount of Rs.50/- per day which he could have earned, working out total disability at 15% the tribunal has reached the datum figure at Rs.250/- and has applied multiplier of 15 and thereby worked out future loss of income at Rs.35,000/-. This, in my opinion, is somewhat unreasonable and arbitrary in view of the fact that there is no positive evidence to prove as to what actual income the claimant was earning and deducting amount of Rs.50/towards one unit on his ownself appears to be more ridiculous because

total number of persons shall have to be seen and what amount he would have spent a day and what amount he would have spent on medicine and what amount he would have otherwise saved are the factors which are required to be taken into consideration. Therefore, in my opinion, amount of Rs.45,000/- is somewhat on higher side and same is required to be reduced by working out the loss which the claimant would have suffered at the rate of 15% p.a on his total income of Rs.40,500/-. If rounded off the figure works out to Rs.40,000/-. Total amount awarded by the tribunal therefore would be reduced to Rs.74,000/which shall have to be paid by the appellant with interest @ 15% p.a. as awarded by the tribunal.

4. In the result, appeal partially succeeds to the aforesaid extent. No costs. Amount of Rs.25,000/- deposited by the Insurance Co in this court is directed to be transmitted to the tribunal and the tribunal shall pass the award within 4 weeks from today.

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